Linda S. Adams
Secretary for
Environmental Protection

Department of Toxic Substances Control

Maureen F. Gorsen, Director
1011 North Grandview Avenue
Glendale, California 91201

Arnold Schwarzenegger
Governor

M E M O R A N D U M

TO: Mohinder Sandhu, P.E., Chief
Standardized Permitting and Corrective Action Branch

FROM: Christine Buckley for
Jose Kou, P.E., Chief
Southern California Permitting and Corrective Action Branch

DATE: October 24, 2007

SUBJECT: SCPCAB'S ARGUMENTS IN RESPONSE TO APPEAL COMMENTS ON INDUSTRIAL SERVICE OIL COMPANY, INC.'S HAZARDOUS WASTE FACILITY PERMIT

The following are the Department of Toxic Substances Control Southern California Permitting and Corrective Action Branch's (SCPCAB) arguments in response to the comments that have been granted review pursuant to California Code of Regulations, title 22, section 66271.18(a) in the appeal of Industrial Service Oil Company, Inc.'s (ISOCI) Hazardous Waste Facility Permit.

APPEAL COMMENT 1-7 by CBE (Rail Car Storage Containment): The permit allows ISOCI to store up to 250,000 gallons of hazardous waste in railcars for up to one year on a rail spur without adequate secondary containment. Storage of this amount of hazardous waste for such an extended period of time is unprecedented in California, posing severe risks to the surrounding communities that have not been properly analyzed.

SCPCAB's Argument

SCPCAB has previously determined that the secondary containment system for the rail car storage unit is adequate and meets the regulatory requirements of California Code of Regulations, title 22, Division 4.5, Chapter 14, Article 9, including the requirements for secondary containment listed in California Code of Regulations, title 22, section 66264.175. These requirements include: (1) an underlying base that is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed; (2) a sloped base to drain and remove liquids resulting from leaks, spills, or precipitation; (3) sufficient capacity to contain precipitation from at least a 24-hour, 25-year storm, plus 10% of the aggregate volume of all

containers or the volume of the largest container, whichever is greater; (4) the prevention of run-on into the containment system unless the collection system has sufficient excess capacity to that required in (3) above to contain any run-on which might enter the system; and (5) the removal of any spilled or leaked waste and accumulated precipitation in as timely a manner as is necessary to prevent overflow of the containment system.

The Rail Car Loading and Unloading Unit, as described in the Part B Hazardous Waste Permit application, states "Tank 800 (Figure IV-26) which is reserved for rail car spills has 55,748 gallons capacity and has over two times a rail car's capacity (25,000 gallons)." Also, "Drains in the railroad spill containment structure drain to a below grade sump where two Wilder M-15 (or equal) pumps are located. These pumps operate automatically by operation of a float switch and direct the collected liquid, using a dedicated pipeline into Tank 800 for protection of the environment. Two pumps are provided for redundancy providing dependable operation. An emergency generator is permanently located on the facility and wired to operate the pumps in the event of a commercial power failure." Tank 800 meets the requirement that "the containment system shall have sufficient capacity to contain precipitation from at least a 24-hour, 25-year storm, plus 10% of the aggregate volume of all containers or the volume of the largest container, whichever is greater." The total volume of precipitation from a 24-hour, 25-year storm is 27,495 gallons.

Additionally, each sump pump has a capacity of 230 gallons per minute. In an event of a catastrophic release from a rail car, it would take less than 2 hours to pump the entire contents of a 25,000-gallon railcar to Tank 800, which is a tank specifically dedicated to contain spills from the railcar loading and unloading unit.

An engineer, licensed in the State of California has certified the following (see Volume 2, Exhibit IV-1 of the Part B Permit application, titled "Secondary Calcs & Cert – Rail Cars"):

"The system is constructed of, steel trays and piping material that is compatible with the wastes to be placed in the stored Tank Cars and has sufficient strength and thickness to prevent failure caused by pressure gradients including static head and external hydrological forces, physical contact with the waste to which it is exposed, climatic conditions and the stress of daily operation including stresses from nearby vehicular traffic.

"The system is provided with a soil foundation or base underlying the Steel Trays and Piping which is capable of providing support to the system, resistance to pressure gradients above and below the system and capable of preventing failure due to settlement, compression, or uplift. The tray and piping is free of cracks or gaps and

sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is removed by two automatically actuated pumps. The electric pumps are provided commercial electric power and emergency generators are also wired within Unit 3 to receive pumped waste and rainfall when it is pumped.

"The system is inspected daily as a method which is designed and operated so that it detects the failure of any Rail Car or the system within 24 hours. The presence of any release of hazardous waste into the secondary containment system is immediately reported and corrective action is taken.

"The system is capable of collecting releases and accumulated liquids until the collected material is detected and removed from Trays, Piping and Tank 800.

"The system is designed to prevent run-on into the secondary containment system."

Also, please see the attached memo from USEPA Office of Solid Waste regarding this subject (Exhibit A).

APPEAL COMMENT 1-9 by CBE (Waste Analysis Plan): The facility's Waste Analysis Plan (WAP) is complex and difficult to understand, and will be challenging to implement even with highly educated and trained personnel. CBE requested that personnel performing the WAP tasks have proper education and training. Figure III-2 of the WAP which refers to a flow chart for waste receiving procedures was not included in this version of the WAP. DTSC did not explain how this objective has been met. The WAP included in the Part B application is dated June 2004. There is no indication that DTSC has required ISOCI to revise the WAP to reflect that waste analysis tasks will always be performed by trained personnel, or to require that ISOCI document that all personnel have received appropriate training. The WAP is unclear as to which analyses will be performed in-house by ISOCI rather than by outside laboratory services and the WAP should be revised to clarify this issue.

SCPCAB's Argument
Part III, Section 1(a) of the Permit states:

The Part "A" and Part "B" Applications dated September 21, 2000 and subsequent revisions 1 through 7, dated June 2002, October 2002, November 2003, June 2004, August 2004, October 2004, and August 2005, respectively, are hereby made a part of this Permit by reference."

Volume 3, Section IX of the Part B Application (June 2004 revision) outlines the Personnel Training Program that all ISOCI employees must complete before being

assigned to hazardous waste operations or activities under ISOCI's hazardous waste facility permit. As stated in Section IX, *"The program provides training in compliance with the health and safety training requirements specified in 29 CFR 1910.120(e) and with the operations training requirements specified in 22 CCR, 66264316."*

Volume 3, Section IX.A(1) states: *"Both classroom and on-the-job sessions are included in the personnel training program. The training required for each employee is dependent upon specific job responsibilities. For those employees who handle hazardous materials and waste, training courses and sessions that complies with OSHA HAZWOPER 24-hour and hazardous waste facility operations will be provided."*

Volume 3, Section IX.B states: *"Continuing training will be provided to refresh and strengthen knowledge of the potential hazards on-site."*

Part E of Section IX outlines the documentation that will be kept at the facility to verify that employees have been trained in the tasks that the WAP requires such employees perform.

There is no regulatory requirement for which fingerprint analyses are to be performed in-house and which are to be performed by an outside laboratory. The Part B application (Volume 1, Section 3.D) does, however, state that Pre-Acceptance Testing (Profiling) analysis and Certified Recycled Oil intended for re-sale will be performed by a California-certified laboratory.

APPEAL COMMENT 1-11 by CBE (Waste Analysis Plan): The frequency and methodology of "fingerprint testing" for incoming hazardous waste streams should be clarified. DTSC has not stated whether ISOCI has determined if adequate laboratory methodologies are available to quantify all the chemicals listed on Table III of the application. No specific analysis for hexavalent chromium is required even though there is a specific regulatory threshold level for this chemical in 22 CCR § 66261.24.

SCPCAB's Argument
SCPCAB assumes the petitioner is referring to Table III-1. Volume 1, Section III.D (Waste Analysis Procedures, Waste Acceptance Testing (Fingerprinting)) of the Part B Application states that:

"Acceptance testing will occur upon receipt of a waste shipment at the facility." Thus the frequency of fingerprint testing will be for every load entering the facility. Table III-3, titled "Waste Sampling And Analytical Methods" lists the methodologies that will be used for every constituent which is part of the fingerprint analysis."

Thus the frequency for fingerprint testing is once per incoming load. Each sample will be analyzed for the constituents listed in Table III-3 lists the analyses that will be performed.

SCPCAB has determined, in consultation with DTSC's Environmental Chemistry Laboratory, that the laboratory methodologies listed by ISOCI are those considered standard and approved by the United States Environmental Protection Agency (USEPA). SCPCAB also notes that the USEPA guidance document titled, "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose Of Hazardous Waste," explains that samples used for fingerprinting need not be analyzed for every chemical that may be encountered at the facility. Specifically the guidance document states (section 1.5.1, page 1-12):

"For example, if you own/operate a TSDF, accept waste from an off-site facility, and rely on the information provided by the generator or TSDF sending you waste, your facility is still responsible for accurately identifying/classifying the waste.

When Might Full-Scale Analysis Be Used?
Therefore, to ensure compliance with RCRA you should conduct a full-scale, or under certain circumstances an abbreviated-scale, sampling, and laboratory testing program for all wastes prior to managing the wastes. Full-scale analysis (e.g., EPA's SW-846 methods or equivalent) may be necessary when:

- *A generator begins a new process or changes an existing process*
- *Wastes are received by a facility for the first time*
- *A generator has not provided appropriate laboratory information to an off-site TSDF*
- *An off-site TSDF has reason to suspect that the wastes shipped were not accurately identified by the generator*
- *EPA changes RCRA waste identification/classification rules.*

When Might Fingerprint Analysis Be Used?
Abbreviated waste analysis, often referred to as "fingerprint analysis" is conducted generally for parameters (e.g., specific gravity, color, flash point, presence of more that one phase, pH, halogen content, cyanide content, percent water) that will give information that can be used to help verify that the waste generated, or received by an off-site TSDF, matches the expected characteristics for that waste. For example, at an off-site TSDF, fingerprint analysis can be used to indicate that the waste received matches the description on the manifest, and that the waste matches the waste type that the facility has agreed to accept. Because the owner/operator of a TSDF already knows the detailed chemical and physical properties of a waste, the appropriate fingerprint or spot check parameters can be chosen easily, since the purpose of the

fingerprint or spot check is only to verify that each waste arriving at the gate of the TSDF is the actual waste expected. The number and character of fingerprint parameters and the criteria for acceptance/rejection of the waste will be discussed in Part Two of this manual."

SCPCAB would also like to emphasize that although there is no regulatory limit for receiving waste containing total chromium, ISOCI or the generator analyzes received waste for total chromium to provide handling information for specific waste streams. ISOCI also analyzes treated oil for total chromium to determine if it meets recycled oil certification standards. The regulatory total chromium limit for recycled oil certification is ≤0 ppm (California Health and Safety Code section 25250, subdivision (a)(3)(B)). Additionally, ISOCI analyzes treated wastewater for total chromium to determine if it meets local discharge limits prior to discharge to the public sewer system. The City of Los Angeles sewer discharge limit for total chromium is ≤0 ppm. Please note that because hexavalent chromium is regulated as a component of total chromium, a separate analysis for hexavalent chromium is not required at this time. Hexavalent chromium levels will included as part of the results of total chromium analyses.

SCPCAB has concluded that ISOCI needs to determine that adequate laboratory methodologies are available to quantify all the chemicals listed on Table III of the application and therefore has included a permit compliance condition (see special condition 2.s. of the permit). ISOCI will be in violation of its permit if it does not adhere to special condition 2.s. of its permit.

APPEAL COMMENT 1-12 by CBE (Waste Analysis Plan): DTSC has not identified the adequacy of the detection limits for PCBs and it is unclear why the facility will be allowed to process wastes that contain PCBs with concentrations up to 49 ppm.

SCPCAB's Argument
Volume I, Section III, Table III-3 of the Part B application, titled, "Waste Sampling And Analytical Methods," specifies that samples will be analyzed to determine if the PCB content is above 2 ppm. SCPCAB has determined that this level of detection is adequate to meet the criteria set forth by California Health & Safety Code, Section 25250.1, which, in part, states that:

- *"Used oil" does not include any of the following:*
  Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater. (Health & Safety Code, section 25250.1(a)(1)(B)(iv))
- *The following standards of purity are in effect for recycled oil, in liquid form, unless the Department, by regulation, establishes more stringent standards:*

Total polychlorinated biphenyls (PCBs): less than 2 mg/kg. (Health & Safety Code, section 25250.1(a)(3)(B)(vii)).

ISOCI is not permitted to accept wastes that contain polychlorinated biphenyls (PCBs) at or greater than 50 parts per million (ppm) which are regulated pursuant to the federal Toxic Substances Control Act (TSCA). Wastes that contain PCB between 5 to 49 ppm, are California-only regulated waste and thus not subject to RCRA regulations, and may only be managed at the Fuel Blending Unit. Other hazardous waste management units may manage wastes with a PCB concentration of less than 5 ppm. The recycled oil produced from the Oil Treatment System must have a PCB concentration of less than 2 ppm. A Special Condition (2r) has been added to the final permit to clarify the PCB concentration limits for the various hazardous waste management units at ISOCI.

APPEAL COMMENT 1-13 by CBE (Waste Analysis Plan): Current operations test for PCBs after commingling, which conflicts with a requirement of the permit, which requires testing before commingling of the waste oil. Conditions to ensure that dilution does not occur should be imposed by DTSC if the facility submits a permit modification request to modify the WAP. DTSC must amend the permit to ensure that PCBs are not introduced or discharged from the facility's wastewater treatment unit.

SCPCAB's Argument
ISOCI is currently operating under an Interim Status Document (ISD) issued by DTSC on May 23, 1986. This ISD, which SCPCAB views as self-implementing provisions, allows ISOCI to choose the way it complies with statutory and regulatory requirements until a final hazardous waste permit is issued. The petitioner is correct that ISOCI tests for PCBs after loads of wastes are commingled. However, the facility is also subject to all hazardous waste statutory and regulatory requirements. Once the permit becomes effective, each incoming load will be required to be tested for PCBs prior to commingling. Once the permit is in effect it will become the document of record that authorizes operations and procedures at the facility.

APPEAL COMMENT 1-16 by CBE (Acceptance of Reactive Hazardous Waste):
Language ensuring that ISOCI will analyze each shipment of bulk waste for the characteristic of reactivity must be added to both the WAP and to Permit special condition 2.q.

SCPCAB's Argument
The petitioner's request is addressed in the Part B Application. Because the Permit includes and incorporates by reference the Part B Application, a modification to

condition 2.q. is unnecessary. Page 9 of 24, Section III of the Part B application states that "Upon arrival at the facility, incoming wastes will be fingerprinted in accordance with the methods listed in Table III-3." Table III-3 lists reactivity as one of the analyses for fingerprint testing. Furthermore, item C.7, page 6 of 24, Section III of the Part B application states that "At a minimum, one sample will be obtained for fingerprinting analysis from each bulk load of waste received by the facility."

APPEAL COMMENT 1-17 by CBE (Acceptance of Reactive Hazardous Waste):
Ten percent sampling frequency for containerized waste is insufficient to ensure ISOCI will not be accepting reactive wastes. All containers of waste codes F007-F011 should be sampled and analyzed to ensure none of them exhibit the characteristic of reactivity. Table III-1 of the WAP should be revised to remove any reference to reactivity being allowed for waste codes F007-F011. ISOCI should be expressly prohibited from accepting all waste codes in which reactives may be present.

SCPCAB's Argument
Permit condition 2.q. clearly states:

The facility shall not accept any waste that exhibits the characteristic of reactivity (D003) based on the test result using US EPA SW-846 as listed in Table III-3 of the Part B permit application or any waste that has been identified by the generator in the Waste Profile or hazardous waste manifest that the waste contains reactive waste.

Thus, the facility is not allowed to accept reactive wastes. Also, the petitioner should note that while most cyanide-containing wastes are reactive, there may be wastes that fall into the classification of F007-F011 but do not meet the criteria specified in California Code of Regulations, title 22, section 66261.23 for the characteristic of reactivity. ISOCI may accept wastes that fall into the classification of F007-F011 as long as they do not exhibit the characteristic of reactivity (D003).

Furthermore, fingerprint sampling is not intended to be an all-inclusive method to identify all constituents of a waste (Please see response to comment 1-11). The USEPA guidance document titled, "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose Of Hazardous Waste," also states (page 2-19, section 2.3):

Sampling is the physical collection of a representative portion of a universe or whole of a waste or waste treatment residual. To be representative, a sample must be collected and handled by means that will preserve its original physical form and composition, as well as prevent contamination or changes in concentration of the parameters to be analyzed. For a sample to provide meaningful data, it is imperative that it reflect the average properties of the universe from which it was obtained, that its physical and

chemical integrity be maintained, and that it be analyzed within a dedicated quality assurance program.
Based on its interpretation of this guidance, the Southern California Permitting and Corrective Action Branch has approved ISOCI's procedures to fingerprint sample containerized waste at a rate of 10 percent to be a representative portion of its waste.

APPEAL COMMENT 1-20 by CBE (Truck loading and Unloading Activities): DTSC must clarify exactly which hazardous waste management activities will be taking place in the "Truck Loading/Unloading and Storage Areas" described in Figure II-4 in the Part B application. If the area is used for storage, this is one more reason secondary containment meeting the regulatory requirements for hazardous waste container storage of California Code of Regulations, title 22, section 66264.175 should be constructed for the area.

SCPCAB's Argument
The "Truck Loading/Unloading and Storage Area" is mistakenly labeled in Figure II-4. No storage of waste is authorized in this area by the permit or by the ISD (see permit condition 2.v., which states, "The permittee shall not place hazardous waste anywhere on the property other than in a permitted unit authorized to accept that particular hazardous waste.") This area is authorized for truck loading and unloading of waste only and is clearly stated in the permit. ISOCI is not planning to use this area as a storage area. Nevertheless, Figure II-4 could be modified through a permit condition to clarify that this area is to be for truck loading and unloading only.

APPEAL COMMENT 1-21 by CBE (Truck loading and Unloading Activities): DTSC must add a narrative to the permit that describes both the truck loading/unloading activities and the loading/unloading areas, as other permits do.

SCPCAB's Argument
The Southern California Permitting and Corrective Action Branch agrees with CBE that a narrative to the permit which describes both the truck loading/unloading activities and the loading/unloading areas is needed. This could be done through a permit modification.

APPEAL COMMENT 1-22 by CBE (Segregation of Incompatible Wastes): The permit must be amended to include a condition specifying how ISOCI will comply with the requirements of California Code of Regulations, title 22, section 66264.177 which requires segregation of incompatible wastes.

SCPCAB's Argument
SCPCAB agrees with CBE that physical segregation of incompatible wastes is needed. This requirement to include physical barriers, or other methods for segregation of incompatible wastes, could be accomplished through a permit modification.

APPEAL COMMENT 1-23 by CBE (Segregation of Incompatible Wastes): DTSC must require ISOCI to demonstrate how the facility will evaluate whether an incoming waste is incompatible with other wastes that are being stored at the facility, and include appropriate conditions in the permit to ensure that this evaluation occurs.

SCPCAB's Argument
The permit states that the Part B application is incorporated into the permit by reference. Volume I, Section III.J of the Part B application describes the methods to be used for ensuring compatibility of wastes, which includes the prohibition of reactive wastes at the facility, and testing for ignitability and reactivity of incoming wastes prior to acceptance at the facility. Section III.J also lists procedures for determining compatibility of wastes to be placed in the same container which includes trial mixing for compatibility assessment in laboratory-sized containers and observed for chemical reactions such as generation of heat or gases. Section III.J.3.(b), titled, "Procedures for determining compatibility of a waste to other wastes stored nearby in containers, piles, open tanks, or surface impoundments" reads: "The compatibility of containerized waste will be determined for the purposes of container storage during the acceptance screening process. Reactive materials will not be accepted at the facility. Acids, caustics, oxidizers, and organic materials will be placed in separated containment areas within the drum storage area at the facility. Wastes to be mixed will be trial-mixed for compatibility assessment in laboratory-sized containers and observed for chemical reactions such as generation of heat or gases."

APPEAL COMMENT 1-26 by CBE (Staging of Hazardous Waste Containers):
DTSC must scrutinize ISOCI's hazardous waste container management practices in greater detail and amend the permit to include a description of authorized staging practices for hazardous waste containers.

SCPCAB's Argument
The Hazardous Waste Facility Permit does not allow for staging of hazardous waste containers. The facility is to place containers in one of the approved waste storage areas immediately after being removed from the transport vehicle Please note special condition 2.v. of the permit, which reads:

"The Permittee shall not place hazardous waste anywhere on the property other than in a permitted unit authorized to accept that particular hazardous waste.

APPEAL COMMENT 1-27 by CBE (Storage Tank Assessment): DTSC must amend the permit to require ISOCI to inspect and certify its tanks every three years by a professional engineer. DTSC has included a special permit condition requiring tank assessment every five years in accordance with API 653 standard but it does not require that inspection be certified by a professional engineer. DTSC also has not explained the basis for selecting the 5 year interval. The special condition must be revised to require certification by a California registered professional engineer with a confined space certification.

SCPCAB's Argument

To address the frequency of tank assessment inspections, California Code of Regulations, title 22, Section 66264.195(e) states: *"As part of the inspection schedule required in section 66264.15(b), and in addition to the specific requirements of subsection (a) of this section, the owner or operator shall develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure shall be adequate to detect cracks, leaks, corrosion, or erosion which may lead to cracks or leaks, or wall thinning to less than the thickness required under section 66264.191(a). Procedures for emptying a tank to allow entry and inspection of the interior shall be established, when necessary, to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments shall be based on the material of construction of the tank, type of corrosion or erosion observed during previous inspections and the characteristics of the waste being transferred, treated or stored."*

To assist in its determination of the frequency for tank assessments at ISOCI, and to assist in its determination of who may perform the inspections, the Southern California Permitting and Corrective Action Branch referenced the document titled, "Tank Inspections, Repair, Alteration, and Reconstruction" also known as API Standard 653, published by the American Petroleum Institute (API).

API 653, Section 4.1, states that:

"Tanks shall be inspected by a qualified inspector as defined herein (see 4.10), unless otherwise noted." API 653, Section 4.10, titled "Inspector Qualifications," states the following:

4.10.1 Qualified inspectors shall have education and experience equal to at least one of the following:

- *a. A degree in engineering plus 1 year of experience in inspection of tanks, pressure vessels or piping.*
- *b. A 2-year certificate in engineering or technology from a technical college, and 2 years of experience in construction, repair, operation or inspection,*

of which one year must be in inspection of tanks, pressure vessels or piping.

c. *The equivalent of a high school education, and 3 years of experience in construction, repair, operation or inspection, of which one year must be in inspection of tanks, pressure vessels or piping.*

4.10.2 An owner/operator of tanks may designate tank inspectors qualified in accordance with 4.10.1. Such inspectors shall have the necessary authority and organizational freedom to perform their duties.

4.10.3 Qualification requirements for personnel performing nondestructive examinations are identified in 10.1.1.2.

API 653, Section 4.3.2.1, titled "Scheduled Inspections," states that: "All tanks shall be given a formal visual external inspection by an inspector qualified in accordance with 4.10 at least every 5 years or at the quarter corrosion-rate life of the shell, whichever is less. Tanks may be in operation during this inspection." In addition, API 653, Section 4.3.3, titled "In-Service Ultrasonic Thickness Measurements Of The Shell," states the following:

4.3.3.1 External, ultrasonic thickness measurements of the shell can be a means of determining a rate of uniform general corrosion while the tank is in service, and can provide an indication of the integrity of the shell. The extent of such measurements shall be determined by the owner/operator.

4.3.3.2 When used, the ultrasonic thickness measurements shall be made at intervals not to exceed the following:

a. *Five years after commissioning new tanks.*
b. *At five year intervals for existing tanks where the corrosion rate is not known.*
c. *When the corrosion rate is known, the maximum interval shall be the smaller of RCA/2N years (where RCA is the remaining corrosion allowance in mils and N is the shell corrosion rate in mils per year) or 15 years.*

4.3.3.3 Internal inspection of the tank shell, when the tank is out of service, can be substituted for a program of external ultrasonic thickness measurements (made on the shell while the tank is in service).

Therefore, in accordance with the API standard, SCPCAB has determined that the tank assessment interval of five (5) years is appropriate. Additionally, the API standard ensures that the engineer is adequately qualified to inspect and certify tanks.

APPEAL COMMENT 1-28 by CBE (Closure Cost Estimate): The closure cost estimates for both existing and proposed operations, stated in special condition 1 of the Permit, are insufficient.

SCPCAB's Argument
The closure cost estimate prepared by SCPCAB includes all activities necessary to close all authorized units and areas handling hazardous wastes. CostPro Software was used to prepare the closure cost estimate. In a memorandum dated January 30, 2007 from Matthew Hale, Director of the Office of Solid Waste of the United States Environmental Protection Agency, to RCRA Waste Management Division Directors (Exhibit B), Regions 1-10, Mr. Hale states:

Within the next several months, OECA-led cost estimation courses will have been provided on closure, post-closure, and corrective action in all of the Regions and in several States. Attendees at the course receive training in, and copies of, two cost estimation software programs. The first is CostPro, which has been an Agency standard for the estimation of closure and post-closure costs. The second is RACER, which has been developed for the U.S. Air Force to estimate costs related to site remediation (including RCRA corrective action). Other primary users of RACER include the Department of Energy, and the Army Corps of Engineers. These tools will help regulators evaluate cost estimates provided by the facility owner or operator[1].

The Southern California Permitting and Corrective Action Branch employs CostPro software to estimate closure costs as it is considered an "Agency standard" by no less an authority than the United States EPA. The Southern California Permitting and Corrective Action Branch also feels that the closure cost estimate is accurate and sufficient for ISOCI. These costs were compiled in letters attached (as Exhibit C and Exhibit D) to this memo.

APPEAL COMMENT 1-29 by CBE (Closure Plan): CBE requests that DTSC require ISOCI to revise the closure plan to list all facilities permitted to handle waste generated during closure of the facility. CBE also requests that the closure plan be revised so that it is consistent with the closure cost estimate.

SCPCAB's Argument
Because it is unknown at this time when closure at ISOCI will actually occur, it is also unknown which facilities will be permitted to handle waste at the time of ISOCI's

[1] CostPro has been used by EPA and state regulators since 1996 to evaluate facility owners' and operators' estimates for closure and post-closure. RACER is primarily used for corrective action, although it can be adapted for closure and post-closure purposes.

closure. Therefore SCPCAB believes that it is impractical for ISOCI to revise its closure plan now to list all facilities permitted to handle waste generated during closure of the facility.

Also, it is important that all authorized units and areas handling hazardous waste are addressed in both the closure plan and the closure cost estimate. The closure plan is written for the facility to implement the closure activities on its own. The closure cost estimate is prepared based on a third party implementing the closure plan should the facility not be able to properly close the facility on its own. The closure cost estimate is also designed to be a conservative estimate of the cost to close the facility under a worst-case scenario; which ensures adequate funds are available to close the facility. Therefore, both the closure plan and closure cost estimate may be slightly different as it is in this case. However, all authorized units and areas handling hazardous waste have been addressed in both documents, thus ensuring that proper funds are available to implement closure.

APPEAL COMMENT 1-30 by CBE (Wastewater Treatment System): The description of waste streams to be treated by the Waste Water Treatment System (WWTS) in the permit is inconsistent with the description in the HRA. "Oil containing liquid waste" is one of the waste streams going into the WWTS, which can include PCB's. DTSC must ensure that PCB's are prevented from entering the WWTS. Based on the waste codes to be accepted by the WWTS, it appears that it should be subject to Clean Water Act requirements under the definition of "centralized waste treatment facility" See 40CFR437.20, et seq. The permit must be amended to specifically require ISOCI to comply with any applicable pre-treatment standards established by Clean Water Act regulations.

SCPCAB's Argument
The Southern California Permitting and Corrective Action Branch believes the quote, "Oil containing liquid waste" has been taken out of context. The facility's Hazardous Waste Facility Permit unit description of the Wastewater Treatment Unit lists the wastes that will be introduced into the unit in the "Waste Types" section of the unit description. The permit describes these wastes as follows:
"Waste Waters from ISOCI treatment of oil containing liquid wastes, aqueous liquids from off-site and on-site washing and rinsing activities, and inorganic off-site Waste Waters Containing less than 1% metals."

When interpreted correctly, this is meant to indicate that the waste type is, in fact, waste water from the treatment of oil. The Southern California Permitting and Corrective Action Branch believes that this description is equivalent to the description of the Waste Water Treatment System included in the Health Risk Assessment.

In addition, the Waste Water Treatment System may only accept California Waste Codes 133, 134, 135, 214, 221, 223, 241, 252, 342, 343, and 561. No RCRA waste codes are authorized to be accepted at the Waste Water Treatment System. Any other waste entering this Unit would be a violation of ISOCI's Hazardous Waste Facility Permit. Pursuant to permit condition 2r, the facility is not authorized to introduce PCB-containing waste into the WWTS. In addition, pretreatment standards established by Clean Water Act regulations are enforced by the agency charged with enforcing the facility's wastewater discharge permit (in this case, the City of Los Angeles Bureau of Sanitation). Furthermore, as stated in Part III, section 2(a) of the permit:

"The Permittee shall comply with the provisions of the California Health and Safety Code, and California Code of Regulations, title 22, division 4.5. The issuance of this Permit by DTSC does not release the Permittee from any liability or duty imposed by federal or state statutes or regulations or local ordinances, except the obligation to obtain this Permit. The Permittee shall obtain the permits required by other governmental agencies, including but not limited to, the applicable land use planning, zoning, hazardous waste, air quality, and solid waste management laws for the construction and/or operation of the Facility."

APPEAL COMMENT 3-1 by ISOCI: Petitioner states that the requirement in the draft permit for PCB testing on each truck-to-receiving tank transfer of used oil is unnecessary and establishes a precedent which would pose an obstacle to the routine collection and transportation of used oil in California. Special Condition 2(b) on page 52 of the Final Permit requires that information sheets and waste profile forms shall include results for PCBs for all incoming loads. This requirement should be modified.

SCPCAB's Argument
The Special Condition 2(b) was incorporated into the permit because the condition was proposed in the facility's Part B permit application. Once a permit is issued, the facility may request to modify its permit only by using the Hazardous Waste Facility Permit modification procedures stated in California Code of Regulations, title 22, section 66270.42, "Permit Modification at the Request of the Permittee." Additionally, in order to modify the permit, the Permittee must propose an alternate to the condition or requirement listed in the permit, as well as procedures for conducting the alternative.

APPEAL COMMENT 3-2 by ISOCI: Special Condition 1(b) on page 52 of the Final Permit, the closure cost estimate (CCE), represents an erroneous application of the law. The CCE is based on an actual quote from a third-party contractor. DTSC used one or more software programs to develop its estimate.

SCPCAB's Argument
SCPCAB disagrees that the CCE, as stated in special condition 1(b), is an erroneous application of the law. California Code of Regulations, title 22, Section 66264.142(a)(2) states: "The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in section 66260.10.) The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times over the life of the facility." SCPCAB uses software programs that include costs and other pertinent information such as work rates from published materials that contractors also use in preparing a cost estimate. The CostPro software used by SCPCAB employs third party estimates of cost. The software programs used by SCPCAB are the equivalent to costs prepared by an third party in that the software programs are objective, have not been developed specifically by or for the ISOCI facility, and are used for other hazardous waste facilities as well as the ISOCI facility. Please see response to comment 1-28. SCPCAB also accepts actual cost from invoices provided by the facility in lieu of the costs from the software programs.

APPEAL COMMENT 3-3 by ISOCI: Special Condition 2(f) on page 53 of the Final Permit, requiring that all waste profiles shall be analyzed by a certified laboratory on an annual basis. This requirement is unnecessarily burdensome and costly to generators, especially those who conduct auto and truck repair and maintenance services and produce oil and spent antifreeze.

SCPCAB's Argument
Section 2.5 of The USEPA Guidance document titled, "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose Of Hazardous Waste," gives the following guidance with regards to waste re-evaluation frequencies:

"The RCRA regulations state that "waste analysis must be repeated as often as necessary to ensure that it is accurate and up to date."[2] *At a minimum, the analysis must be repeated as follows:*

- *When the TSDF is notified, or has reason to believe that the process or operation generating the hazardous waste has changed*[3]
- *When the generator has been notified by an off-site TSDF that the characterization of the wastes received at the TSDF does not match a pre-approved waste analysis certification and/or the accompanying waste*

[2] 40 CFR §§ 264.13(a)(3)/265.13(a)(3)
[3] 40 CFR § 264.13(a)(3)(i)

manifest or shipping paper (the generator may be requested to re-evaluate the waste).[4]

- *Off-site combustion facilities should characterize all wastes prior to burning to verify that permit conditions will be met (i.e., fingerprint analysis may not be acceptable).*

Although there are no required time intervals for re-evaluating wastes, you must develop a schedule for re-evaluating the waste on a regular basis. You will need to make an individual assessment of how often the wastes analysis is necessary to ensure compliance with your interim status or Part B operating conditions.

Off-site TSDFs will want to be particularly thorough in developing a schedule for re-evaluating wastes that will (1) confirm that the information provided by the generator is correct, and (2) detect any changes in the waste properties while managing the waste. When receiving wastes from off-site generators, conducting corroborative testing and or analysis will provide added protection. It is common practice for TSDFs that receive wastes from and off-site generator (or other facility) to require submittal of a Waste Profile Sheet (or comparable document) to the TSDF as a pre-acceptance condition. A Waste Profile Sheet provides a comprehensive description of each wastestream. An example Waste Profile Sheet is provided as Table 2-11, located at the end of Part Two. Additionally, the TSDF may request that the generator also provide a representative sample of the waste to be analyzed by the TSDF, to confirm the generator's waste profile description.

*Most facilities that receive wastes from off site sample a percentage of the wastes when they are received, and check each waste container for "**selected fingerprint analysis parameters**." Fingerprint analyses are used to provide an **indication** of whether the waste has been accurately identified by the generator on the hazardous waste manifest, LDR notification/certification, pre-acceptance contract or any other documentation. Choosing the appropriate fingerprint analysis parameters requires facility-specific determinations based on several factors that are discussed in detail in the next section (i.e., Section 2.6).*

Fingerprint analysis is never a substitute for conducting a complete waste analysis and, therefore, may not be defensible if a waste is misidentified by the generator and passes the fingerprint test. Though the generator is responsible for properly identifying and classifying the waste, the TSDF will be held liable by enforcement authorities if it violates it permit conditions and any other applicable regulations. The decision to conduct abbreviated corroborative testing using fingerprint analysis on a few select

[4] 40 CFR §264 13(a)(3)(ii)

parameters, or to conduct a complete analysis to verify the profile, is ultimately determined by the off-site facility with this in mind."

Because ISOCI did not specify a re-evaluation frequency in its Part B application, SCPCAB, using the guidance above, determined that one-year intervals would be required for all waste profiles to be analyzed by a certified laboratory on an annual basis.

APPEAL COMMENT 3-4 by ISOCI: Special Condition 2(u) in page 57 of the Final Permit states, as a new condition, that "the permit for the proposed units shall not become effective until the applicant is granted a local land used (sic) permit." It is clearly erroneous for DTSC to impose land use conditions which are not within DTSC's statutory jurisdiction, and this statement should be stricken from the permit. The first part of the Special Condition, stating the ISOCI shall not begin construction without the required local permits is sufficient to ensure that ISOCI will obtain land use permits as necessary and required by local laws and regulations. ISOCI, located within an M3 "heavy industrial" zone, is permitted by right to conduct various existing and proposed activities.

SCPCAB's Argument
Health and Safety Code section 25199.3 states, in part:

"...(a) Notwithstanding any other provision of law, an applicant for a hazardous waste facility project may submit applications for a land use decision and for one or more permits to the appropriate public agencies simultaneously. Unless a state agency is prohibited by statute from approving a permit before the granting of a local land use decision, the state agency shall not refuse to issue a permit for a hazardous waste facility project on the grounds that the applicant has not been granted a land use permit, **except that the state agency may provide that the permit shall not become effective until the applicant is granted a local land use permit**..."(emphasis added).

Because DTSC is not prohibited by statute from approving a permit before the granting of a local land use decision, it included the exact language authorized by Health and Safety Code section 25199.3, subsection (a) in the permit. As a result, DTSC did in fact act within its statutory jurisdiction, and therefore, Special Condition 2(u) is appropriate as a special condition of the permit.